IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4303 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M/S THAKOOR TECHNOLOGIES PVT. LTD. AND ANOTHER
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR RD DAVE for Applicants.
MR PRADIP BHATE, APP for Respondent No. 1.
RULE SERVED for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 03/02/2006

ORAL JUDGMENT

By filing this application, the applicants have prayed that complaint being Criminal Case No.4094/1993 filed by respondent no.2 under the provisions of the Standards of Weights and Measures Act, 1976

may be quashed, as according to Mr.Dave, learned advocate for the applicants, the applicants are entitled to get exemption as per Rule 34 of Standards of Weights and Measures (Packaged Commodities) Rules 1977, since according to him it is an industrial product and it is covered under Rule 34.

In my view, so far as question whether the applicants are entitled to get exemption as per Rule 34 is concerned, evidence is required to be considered to find out whether it was an industrial product and whether it was specially packed for the exclusive use of industry as a raw material or for the purpose of servicing any industry, mine or quarry.

Considering this aspect Mr.Dave submitted that in order to take aforesaid point in the pending trial he is not pressing this application and seeks permission to withdraw this application. However, he requested that aforesaid point may be decided as a preliminary issue by learned Magistrate so that the applicants may not have to go to other points if they are able to establish that they are entitled to exemption as per Rule 34 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977.

Permission to withdraw this application is granted. However, it is clarified that if any application is made by the applicants to decide as a preliminary point the question about whether the applicants are entitled to get the benefit of Rule-34, the learned Magistrate may decide such application in accordance with law. Ultimately, if the Court comes to the conclusion that the applicants are not entitled to exemption as claimed by them, the trial Court may decide the matter on other points.

Subject to what is stated herein above, this application is disposed of as withdrawn. Rule is discharged. Interim relief stands vacated. Writ to be sent to the trial Court forthwith.

(P.B.MAJMUDAR, J.)

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